

**AGREEMENT BETWEEN
LAKE COUNTY, FLORIDA AND
ARTHUR GERRINGER D/B/A THE INTER-SEC GROUP
THREAT ASSESSMENT STUDY FOR THE COUNTY TRANSIT SYSTEM
RFP #14-0221**

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the COUNTY, by and through its Board of County Commissioners, and Arthur Gerringer d/b/a The Inter-Sec Group, his successors and assigns, hereinafter referred to as CONSULTANT.

WITNESSETH:

WHEREAS, the COUNTY has publicly submitted a Request for Proposals (RFP), #14-0221, for procurement of a vendor to conduct a comprehensive Security Risk and Vulnerability Assessment of the Lake County Transit System; and

WHEREAS, the CONSULTANT desires to perform such services subject to the terms of this Agreement; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

Article 1. Recitals

1.1 The foregoing recitals are true and correct and incorporated herein.

Article 2. Scope of Professional Services

2.1 On the terms and conditions set forth in this Agreement, COUNTY hereby engages CONSULTANT to conduct a comprehensive Security Risk and Vulnerability Assessment of the Lake County Transit System as identified in the Scope of Services, set forth **Exhibit A**, attached hereto and incorporated herein by reference, as clarified or amended by Addendum #1, dated August 19, 2014, attached hereto and incorporated herein by reference as **Exhibit B**. CONSULTANT shall provide all equipment, materials and services as identified in **Exhibit C**, attached hereto and incorporated herein by reference. CONSULTANT shall additionally comply with all applicable federal requirements as set forth in **Exhibit D**, attached hereto and incorporated herein by reference.

2.2 CONSULTANT shall supply the COUNTY with five (5) complete copies of the final report, along with an electronic copy on CD or flash drive. Final payment shall be withheld until such time as these manuals are received by the COUNTY.

2.3 This Agreement shall be effective for one hundred eight (180) days immediately following the date of execution of the Agreement by the COUNTY. **CONSULTANT AGREES AND ACKNOWLEDGES THAT TIME IS OF THE ESSENCE IN COMPLETING THE WORK REQUIRED HEREUNDER IN THE TIME FRAMES SPECIFIED.**

2.4 The CONSULTANT shall coordinate, cooperate, and work with any other consultants retained by the COUNTY. CONSULTANT acknowledges that nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services

as those undertaken by the CONSULTANT or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

2.5 Any work that commences prior to and will extend beyond the expiration date of the current Agreement period shall, unless terminated by mutual written agreement between COUNTY and CONSULTANT, continue until completion at the same prices, terms and conditions.

2.6 If, when, and to the extent during its activities under this Agreement a court determines that the CONSULTANT is a "contractor" for purposes of Section 119.0701, Florida Statutes, CONSULTANT shall comply with all of the Florida public records' laws.

Article 3. Payment

3.1 Payment shall for all services required hereunder shall not exceed \$14,995.00, and shall be paid in one lump sum upon approval and acceptance of the work at the conclusion of the project. Payment shall be based upon the equipment, materials, good and services identified in the Consultant's Pricing, set forth in **Exhibit C**. Payment shall be withheld if the deliverables identified herein are not supplied to the satisfaction of the COUNTY.

3.2 Invoices shall be submitted in duplicate to Ken Harley, Public Transportation Division Manager, P.O. Box 7800, Tavares, Florida 32778. Each invoice shall contain the RFP number, a detailed description of services and fees, dates and locations of services, and confirmation of acceptance of the goods or services by the appropriate COUNTY representative.

3.3 The COUNTY shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Failure to submit invoices in the prescribed manner will delay payment, and CONSULTANT may be considered in default of contract and the contract may be terminated.

3.4 Other than the approved total hours and related direct expenses composing the fee set forth in Section 3.1 above, the CONSULTANT shall not be entitled to payment for any expenses, fees, or other costs it may incur at any time and in any connection with its performance hereunder. The CONSULTANT hereby agrees that its hourly billing rates are fully loaded and includes all overhead and administrative expenses.

3.5 In the event any part of this Agreement is to be funded by federal, state, or other local agency monies, the CONSULTANT hereby agrees to comply with all requirements of the funding entity applicable to the use of the monies, including full application of requirements involving the use of minority firms, women's business enterprises, and labor surplus area firms. The CONSULTANT is advised that payments under this Agreement may be withheld pending completion and submission of all required forms and documents required of the CONSULTANT pursuant to the grant funding requirements. A copy of the requirements shall be supplied to the CONSULTANT by the COUNTY upon request.

3.6 CONSULTANT shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

- A. All persons employed by the CONSULTANT during the term of this Agreement to perform employment duties within Lake County; and

- B. All persons, including subcontractors, assigned by the CONSULTANT to perform work pursuant to the contract.

Article 4. County Responsibilities

4.1 COUNTY shall promptly review the deliverables and other materials submitted by CONSULTANT and provide direction to CONSULTANT as needed. COUNTY shall designate one County staff member to act as COUNTY'S Project Administrator and/or Spokesperson.

4.2 COUNTY shall reimburse CONSULTANT, in accordance with the provisions of Article 3 above for required services timely submitted and approved and accepted by COUNTY in accordance with the terms of this Agreement.

4.3 COUNTY will provide to the CONSULTANT all necessary and available data, photos, and documents the COUNTY possesses that would be useful to the CONSULTANT in the completion of the required services.

Article 5. Special Terms and Conditions

5.1 **Qualifications.** Firms or individuals will be registered with the State of Florida and have obtained at least the minimum thresholds of education and professional experience required by the statutes to perform the services contained herein. The CONSULTANT shall either be registered or have applied for registration with the Florida Department of State in accordance with the provisions of Chapter 607, Florida Statutes.

5.2 **Termination.** This Agreement may be terminated by the COUNTY upon thirty (30) days advance written notice to the other party; but if any work or service/Task hereunder is in progress but not completed as of the date of termination, then this Agreement may be extended upon written approval of the COUNTY until said work or service(s)/Task(s) is completed and accepted.

A. **Termination for Convenience.** In the event this Agreement is terminated or cancelled upon the request and for the convenience of COUNTY with the required 30 day advance written notice, COUNTY shall reimburse CONSULTANT for actual work satisfactorily completed and reasonable expenses incurred.

B. **Termination for Cause.** Termination by County for cause, default, or negligence on the part of CONSULTANT shall be excluded from the foregoing provision. Termination costs, if any, shall not apply. The 30-day advance notice requirement is waived in the event of termination for cause.

C. **Termination Due to Unavailability of Funds in Succeeding Fiscal Years.** When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, this Agreement shall be canceled and the CONSULTANT shall be reimbursed for services satisfactorily performed and the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services/Tasks delivered under this Agreement.

5.3 **Assignment of Agreement** This Agreement shall not be assigned except with the written consent of the COUNTY'S Procurement Services Manager. No such consent shall be construed as making the COUNTY a party to the assignment or subjecting the COUNTY to liability of any kind to any assignee. No assignment shall under any circumstances relieve the CONSULTANT

of liability and obligations under this Agreement and all transactions with the COUNTY must be through the CONSULTANT. Additionally, unless otherwise stipulated herein, the CONSULTANT shall notify and obtain prior written consent from the COUNTY prior to being acquired or subject to a hostile takeover. Any acquisition or hostile takeover without the prior consent of the COUNTY may result in termination of this Agreement for default.

5.4 Insurance. CONSULTANT shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to COUNTY, policies of insurance containing the following types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or nonperformance of services under this Agreement by the CONSULTANT or by anyone directly or indirectly employed by CONSULTANT, or by anyone for whose acts CONSULTANT may be liable. Failure to obtain and maintain such insurance as set out below will be considered a breach of contract and may result in termination of the contract for default. CONSULTANT shall not commence work under the Agreement until COUNTY has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/\$2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

- (ii) Automobile liability insurance, including owned, non-owned and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (iii) Workers' compensation insurance in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers' compensation insurance, the CONSULTANT must provide a notarized statement that if he or she is injured, he or she will not hold the COUNTY responsible for any payment or compensation for that injury.

- (iv) Employer's liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Professional liability and/or specialty insurance (medical malpractice, engineers, architect, consultant, environmental, pollution, errors and omissions, etc.) as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

(vi) **Lake County, A Political Subdivision Of The State Of Florida, And The Board Of County Commissioners**, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

(vii) Certificates of insurance shall provide for a minimum of thirty (30) days prior written notice to the COUNTY of any material change or cancellation of the required insurance. It is the CONSULTANT's specific responsibility to ensure that any such notice is provided within the stated timeframe.

(viii) Certificates of insurance shall identify the RFP number, contract, project, etc., in the Description of Operations section of the Certificate.

(ix) The Certificate holder shall be: LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS, P.O. BOX 7800, TAVARES, FL 32778-7800

(x) Certificates of insurance shall evidence a waiver of subrogation in favor of the COUNTY, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the COUNTY.

(xi) CONSULTANT shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the CONSULTANT evidencing coverage and terms in accordance with the CONSULTANT's requirements.

(xii) All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the COUNTY. At the option of the COUNTY, the insurer shall reduce or eliminate such self-insured retentions, or the CONSULTANT or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

(xiii) The COUNTY shall be exempt from and in no way liable for any sums of money which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the CONSULTANT and/or subcontractor providing such insurance.

(xiv) Neither approval by the COUNTY of any insurance supplied by the CONSULTANT, nor a failure to disapprove that insurance, shall relieve the CONSULTANT of full responsibility of liability damages, and accidents as set forth herein.

(xv) If it is not possible for the CONSULTANT to certify compliance, on the certificate of insurance, with all of the above requirements, then the CONSULTANT is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

5.5 Indemnity. The CONSULTANT shall indemnify and hold the COUNTY and its agents, officers, commissioners or employees harmless for any damages resulting from failure of the CONSULTANT to take out and maintain the above insurance. The CONSULTANT agrees for good and valuable consideration in the amount of ten dollars (\$10.00) to indemnify, and hold the Board of County Commissioners, Lake County, Florida, and its officers, commissions, and employees free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or

other expenses or liabilities to the extent resulting from the negligent act, error or omission of the CONSULTANT, its agents, employees or representative, in the performance of CONSULTANT'S duties set forth in this Agreement.

5.6 Independent Contractor. CONSULTANT agrees that it shall be acting as an independent contractor and shall not be considered or deemed to be an agent, employee, joint venturer, or partner of COUNTY. CONSULTANT shall have no authority to contract for or bind COUNTY in any manner and shall not represent itself as an agent of COUNTY or as otherwise authorized to act for or on behalf of COUNTY.

5.7 Ownership of Deliverables. Upon completion of and payment for a task CONSULTANT agrees all Tasks and/or deliverables under this Agreement, and other data generated or developed by CONSULTANT under this Agreement or furnished by COUNTY to CONSULTANT shall be and/or remain the property of COUNTY. CONSULTANT shall perform any acts that may be deemed necessary or desirable by COUNTY to more fully transfer ownership of all Tasks and/or deliverables to COUNTY, at COUNTY's expense. Additionally, CONSULTANT hereby represents and warrants that it has full right and authority to perform its obligations specified in this Agreement. CONSULTANT and COUNTY recognize that CONSULTANT'S work product submitted in performance of this Agreement is intended only for the project described in this Agreement. COUNTY'S alteration of CONSULTANT'S work product or its use by COUNTY for any other purpose shall be at COUNTY'S sole risk.

5.8 Return of Materials. Upon the request of the COUNTY, but in any event upon termination of this Agreement, CONSULTANT shall surrender to the COUNTY all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials pertaining to the services hereunder, that were furnished to the CONSULTANT by the COUNTY pursuant to this Agreement. CONSULTANT may keep copies of all work product for its records.

5.9 NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the work from any cause whatsoever, shall relieve the CONSULTANT of his duty to perform or give rise to any right to damages or additional compensation from the COUNTY. The CONSULTANT expressly acknowledges and agrees that the CONSULTANT shall receive no damages for delay. The CONSULTANT'S sole remedy, if any, against the COUNTY shall be the right to seek an extension to the contract time. However, this provision shall not preclude recovery of damages by the CONSULTANT for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY. Otherwise, CONSULTANT shall be entitled to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

The parties will exercise every reasonable effort to meet their respective obligations hereunder. Notwithstanding the above, the parties shall not be liable for delays resulting from force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law or regulation, acts of nature, acts or omissions of the other party, government acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems and/or any cause whatsoever beyond the reasonable control of the parties. Any such cause will extend the performance of the delayed obligation to the extent of the delay so incurred.

5.10 Retaining Other Consultants. Nothing herein shall be deemed to preclude the COUNTY from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by the CONSULTANT or from independently developing or acquiring materials or programs that are similar to, or competitive with, the services provided under this Agreement.

5.11 Accuracy and Warranty. The CONSULTANT is responsible for the professional quality, technical accuracy, timely completion and coordination of all the services furnished hereunder. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in its designs, drawings, reports or other services. Any corrections shall be made within thirty (30) calendar days after such deficiencies or non-conformances are verbally reported by the COUNTY. CONSULTANT agrees that the products and services provided under this Agreement shall be covered by the most favorable commercial warranty that CONSULTANT gives to any customer for comparable products and services.

5.12 Accident Prevention and Barricades. Precautions shall be exercised at all times for the protection of persons and property. The CONSULTANT shall conform to all relevant federal, state, and local regulations during the course of such effort. Any fines levied by the governmental authorities having jurisdiction over the work shall be borne by the CONSULTANT. Barricades shall be provided by the CONSULTANT when work is performed in areas traversed by persons, or when deemed necessary by the COUNTY.

5.13 Codes and Regulations. All work completed under this Agreement shall conform to all applicable federal, state and local statutes, codes, regulations and ordinances.

5.14 Public Entity Crimes. A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Florida Statutes, section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

5.15 Prohibition Against Contingent Fees. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

5.16 Conflict of Interest. CONSULTANT agrees that it will not engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement, or which would violate or cause others to violate the provisions of Part III, Chapter 112, Florida Statutes, relating to ethics in government. Further, CONSULTANT hereby certifies that no officer, agent, or employee of COUNTY has any material interest either directly or indirectly in the business of CONSULTANT conducted here and that no such person shall have any such interest at any time during the term of this Agreement unless approved by the COUNTY.

5.17 Copyrights. Any copyright derived from any agreement derived from this Agreement shall belong to the author. The author and the CONSULTANT shall expressly assign to the COUNTY nonexclusive, royalty free rights to use any and all information provided by the CONSULTANT in any deliverable and/or report for the COUNTY'S use which may include publishing in COUNTY documents and distribution as the COUNTY deems to be in the COUNTY'S best interests. If anything included in any deliverable limits the rights of the COUNTY to use the information, the deliverable shall be considered defective and not acceptable and the CONSULTANT will not be eligible for any compensation.

5.18 Right to Audit. The COUNTY reserves the right to require CONSULTANT to submit to an audit by any auditor of the COUNTY'S choosing. CONSULTANT shall provide access to all of its records which relate directly or indirectly to this Agreement at its place of business during regular business hours. CONSULTANT shall retain all records pertaining to this Agreement and upon request make them available to the COUNTY for five (5) years following expiration of the Agreement. CONSULTANT agrees to provide such assistance as may be necessary to facilitate the review or audit by the COUNTY to ensure compliance with applicable accounting and financial standards. Additionally, CONSULTANT agrees to include the requirements of this provision in all contracts with subcontractors and material suppliers in connection with the work performed hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the CONSULTANT to the COUNTY in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the COUNTY'S audit shall be reimbursed to the COUNTY by the CONSULTANT. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the CONSULTANT'S invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the COUNTY'S audit findings to the CONSULTANT.

5.19 Clean-Up. All unusable materials and debris shall be removed from the premises at the end of each work day, and disposed of in an appropriate manner. Upon final completion, the CONSULTANT shall thoroughly clean up all areas where work has been involved as mutually agreed upon with the COUNTY.

5.20 Risk of Loss.

A. The CONSULTANT assumes the risk of loss of damage to the COUNTY'S property during possession of such property by the CONSULTANT, and until delivery to, and acceptance of, that property to the COUNTY. The CONSULTANT shall immediately repair, replace or make good on the loss or damage without cost to the COUNTY, whether the loss or damage results from acts or omissions (negligent or not) of the CONSULTANT or a third party.

B. The CONSULTANT shall indemnify and hold the COUNTY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONSULTANT shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the COUNTY when applicable, and shall pay all costs and judgments which may issue thereon.

Article 6. General Conditions

6.1 This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement shall lie in Lake County, Florida.

6.2 Neither Party may assign any rights or obligations under this Agreement to any other party unless specific written permission from the other party is obtained.

6.3 The captions utilized in this Agreement are for the purposes of identification only and do not control or affect the meaning or construction of any of the provisions hereof.

6.4 This Agreement shall be binding upon and shall inure to the benefit of each of the parties and of their respective successors and permitted assigns.

6.5 This Agreement may not be amended, released, discharged, rescinded or abandoned, except by a written instrument duly executed by each of the parties hereto.

6.6 The failure of any party hereto at any time to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

6.7 During the term of this Agreement CONSULTANT assures COUNTY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that CONSULTANT does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discrimination in any form or manner against CONSULTANT employees or applicants for employment. CONSULTANT understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

6.8 CONSULTANT shall at all times comply with all Federal, State and local laws, rules and regulations.

6.9 The employee(s) of CONSULTANT shall be considered at all times its employee(s) and not an employee(s) or agent(s) of COUNTY. CONSULTANT shall provide employee(s) capable of performing the work as required. The COUNTY may require CONSULTANT to remove any employee it deems unacceptable. All employees of the CONSULTANT shall wear proper identification.

6.10 Any individual, corporation, or other entity that attempts to meet its contractual obligations with the COUNTY through fraud, misrepresentation or material misstatement, may be debarred for up to five (5) years. The COUNTY as a further sanction may terminate or cancel any other contracts with such individual, corporation, or entity. Such individual or entity shall be responsible for all direct or indirect costs associated with termination or cancellation, including attorney's fees.

6.11 CONSULTANT shall act as the prime consultant for all required items and services and shall assume full responsibility for the procurement and maintenance of such items and services. CONSULTANT shall be considered the sole point of contact with regards to all stipulations, including payment of all charges and meeting all requirements of this Agreement. All subcontractors will be subject to advance review by the COUNTY in terms of competency and security concerns. No change in subcontractors shall be made without consent of the COUNTY. CONSULTANT shall be responsible for all insurance, permits, licenses and related matters for any and all subcontractors. Even if the subcontractor is self-insured, the COUNTY may require the CONSULTANT to provide any insurance certificates required by the work to be performed.

6.12 With the consent of CONSULTANT, other agencies may make purchases in accordance with the contract. Such purchases shall be governed by the same terms and conditions as stated herein with the exception of the change in agency name.

6.13 The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

6.14 Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand or mailed by United States registered or certified mail or sent by facsimile, addressed as follows:

If to CONSULTANT:

Arthur Geringer
5814 Gabor Drive
San Antonio, Texas 78240

If to COUNTY:

County Manager
Lake County Administration Building
315 West Main Street, Suite 308
Post Office Box 7800
Tavares, Florida 32778-7800

Each party hereto may change its mailing address by giving to the other party hereto, by hand delivery, United States registered or certified mail notice of election to change such address.

Article 7. Scope of Agreement

7.1 This Agreement is intended by the parties hereto to be the final expression of their Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any representations, statements, or agreements to the contrary heretofore made.

7.2 This Agreement contains the following Exhibits:

Exhibit A	Scope of Services
Exhibit B	Addendum
Exhibit C	Consultant's Pricing
Exhibit D	Federal Clause Set

IN WITNESS WHEREOF, IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Procurement Services Manager, and CONSULTANT through its duly authorized representative.

CONSULTANT

The Inter-Sec Group


Arthur Geringer

This 5th day of FEBRUARY, 2015

COUNTY


Barnett Schwartzman, Manager
Procurement Services

This 9th day of FEBRUARY, 2015.

Approved as to form and legality:


Sanford A. Minkoff
County Attorney

EXHIBIT A: SCOPE OF SERVICES

Threat and Vulnerability Assessment Study

Lake County Public Transportation Division is seeking a qualified individual or firm to conduct a comprehensive Security Risk and Vulnerability Assessment of the County's Transit System. The Assessment will be conducted in accordance with the best practices for transit systems as established by the Federal Transit Administration and will identify the security risks and vulnerabilities to the County's transit system and recommend appropriate mitigation measures.

Background

Lake County Public Transportation Division (LCPTD) is a division of Lake County Department of Community Services. LCPTD provides the following transit services:

1. **Fixed Route:** LakeXpress is the County's fixed route that serves the urbanized areas of Lake County consisting of the Villages, Lady Lake, Fruitland Park, Leesburg, Tavares, Eustis, Altamonte, Umatilla and Mount Dora and portions of Orange County including the communities of Tangerine and Zellwood.

Route 1: Route 1 has four blocks (buses). Route one is a Cross County Connection and travels primarily West to East from Spanish Springs Station in the Villages to Eustis. Route 1 meets the Sumter County buses in the Villages. Going south it connects to Route 2 at Citizens Boulevard and US 27 in Leesburg. Users can transfer from Route 1 to Route 2 or continue on Route 1. All transfers are free.

Route 1 departs Citizens Boulevard and heads east to Eustis. It provides service to major facilities such as Lake Square Mall, Lake Sumter State College, Florida Hospital Waterman, and provides transfers to Route 3 at the Lake Technical Center located in Eustis at 2001 Karl Street. Route 1 continues northeast through major portions of Eustis including the downtown area and the Eustis Community Center.

Route 2: The Leesburg Circulator serves the major activity centers in Leesburg. Its boundaries are north to Wal-Mart on US 27 at the Leesburg/Fruitland Park City limits, south to SR 44, then east to Leesburg Regional Medical Center, then west to CR 468.

Route 3: The Mount Dora Circulator travels through Mount Dora on a 14.3 route mile loop. The boundaries are northeast to Limit Avenue, south to Camp Avenue, west to Donnelly Street (including historic downtown), and east to Wardell Street.

Route 4: The Zellwood Connector, was initiated on July 1, 2009 and provides service every 120 minutes from the Altamonte Post Office on SR 19 to the community of Zellwood on US 441. This service links major population centers in Umatilla, Eustis and Mount Dora to Zellwood and connects to LYNX Route 44 in Orange County. A significant transit-dependent population lives along this corridor, and this service offers the potential of

attracting current paratransit patrons to the fixed-route service. Ridership on this route has more than tripled since initiation.

The service hours are from 6:00 a.m. to 8:00 p.m., Monday through Friday. Routes 1-3 operate on a one-hour headway schedule. Route 4 operates on a two-hour headway. No additional buses are required for peak hours. The Fixed Route service is provided by a fleet of thirty foot (30') vehicles consisting of Blue Bird, Eldorado and International vehicles. The paratransit (PT) fleet is comprised of an assortment of passenger vehicles (vans and sedans). All vehicles are owned and maintained by the County.

2. ADA Complementary Paratransit Service: This service is provided by the County as required by U.S. Department of Transportation (USDOT) regulations implementing the Americans with Disabilities Act of 1990 (ADA). As required by these regulations (49 CFR Parts 27, 37 and 38), individuals with disabilities who are unable to use the fixed route system and who are determined "ADA Paratransit Eligible" by the County are eligible to use this service.

ADA Service is provided on a "next-day" basis and during all days and hours that the LakeXpress fixed route service is operated. ADA service is provided along the fixed route corridor. A distinction is made between trips with origins and destinations that are within three quarters (3/4) of a mile of a fixed route and those with origins and destinations outside the fixed route area.

All types of trip purposes are served, without prioritization, under the ADA program, and the service must be operated without "capacity constraints" as detailed in the regulations.

3. Transportation Disadvantaged (TD) Service: This service is provided using funding made available to the County by the Florida Commission for the Transportation Disadvantaged (CTD) under Chapter 427, Florida Statutes. Certain seniors, persons with disabilities, low-income individuals, and others who meet the definition of "transportation disadvantaged" under Chapter 427, Florida Statutes, are eligible to use this service.

Service policies, including trip purposes, days and hours of service, service area, fares, and other policies are established through the Transportation Disadvantaged Local Coordinating Board (TDLCB) and detailed in contracts that the County has with the Florida CTD.

Currently, TD funding is used to provide trips for TD eligible customers who are not ADA Paratransit Eligible who are traveling outside of the fixed route area (defined as ¾ mile corridors around all fixed routes). Because TD funding is limited, requests are served on a first-come, first-served basis and are prioritized as follows: (1) Medical, (2) Nutritional.

4. Medicaid Non-Emergency Medical Transportation: The County also serves as the provider of Medicaid funded nonemergency medical transportation under a contract with the Florida Commission for Transportation Disadvantaged. The County is also pursuing contracts with Access2Care and MTM in order to be their transportation providers under Medicaid Reform.

5. Non-Emergency Stretcher Transportation: Part of the Medicaid Non-Emergency Medical Transportation service involves the provision of transportation to eligible Medicaid beneficiaries who must travel on stretchers.

Non-emergency stretcher transportation is provided with vehicles specially designed to accommodate and secure customers using stretchers. Currently the County has two (2) vehicles that are used for stretcher transportation.

The County has a local ordinance for stretcher services that requires a driver plus an assistant, specially trained to provide stretcher transportation. As with the overall Medicaid transportation service, stretcher transportation is provided to eligible Medicaid beneficiaries traveling to Medicaid approved programs and services.

6. Local Human Service Agency Transportation: The County also coordinates the provision of transportation with local human service agencies. These agencies have contracts with the County for the provision of specified customer transportation. Typically, the transportation purchased through the County involves ongoing group subscription transportation of customers to and from program sites. The local agencies identify the eligible customers, the desired arrival and pick-up times, and the program sites to be served.

7. Deviated fixed route: The County operates a deviated fixed route service that runs on Fridays from Paisley to Deland. The service operates between the hours of 8:00 a.m. until 1:30 p.m..

The County entered into an agreement with Ride Right, Inc. to operate the County's fixed route and paratransit services. Ride Right sub-contracts with Maruti Transit to operate the fixed route service and Ride Right operates the paratransit services.

The transit vehicles are maintained by Lake County Fleet Division located at 20423 Independence Boulevard Groveland.

The fixed route fleet is stored at the Lake County Public Transportation Division Office at 2440 Highway 441/27, Fruitland Park.

The paratransit vehicles are stored at Ride Right's Office at 31735 Executive Boulevard, Leesburg and the County's Fuel Facility in Astatula at 13130 County Landfill Road, Tavares.

Definitions / Abbreviations

LakeXpress	Lake County Public Transportation
TVA	Threat and Vulnerability Assessment
TSI	Transit Safety Institute
CPTED	Crime Prevention Through Environmental Design Concepts

Scope of Work

The work to be performed is to conduct a comprehensive Security Risk and Vulnerability Assessment of the County Transit System. The Assessment will be conducted in accordance with the best practices for transit systems as established by the Federal Transit Administration and will identify the security risks and vulnerabilities to the County's transit system and recommend mitigation measures to address them.

(a) The following locations are required to be evaluated as a result of this Threat and Vulnerability Assessment

- (1) Ride Right Office
Lake County Connection 31735 Executive Boulevard, Leesburg, FL 34748
- (2) Lake County Fleet Facility
20423 Independence Boulevard
Groveland, FL 34736
- (3) Lake County Public Transportation
2440 Highway 641/27
Fruitland Park, FL 34731
- (4) Astatula Fuel Facility
13130 County Landfill Road
Tavares, FL 32776.

(b) Regulations to be used as well as preferred certifications:

- (1) Florida Administrative Code Rule Chapter: 14-90, Equipment and operational safety standards for bus transit systems.
- (2) Florida Department of Transportation Public Transit Office Standards Manual 725-030-014 (copy will be provided to the awarded contractor).
- (3) Transportation Safety Institute (TSI) course - Transit System Security.
- (4) Transportation Safety Institute (TSI) course - Crime Prevention Through Environmental Design Concepts (CPTED).
- (5) Establish security standards set forth by the Federal Transit Administration with upcoming changes outlined in MAP 21.

(c) Work to be completed:

- (1) Review crime statistics for each affected area and determine if any valid threats exist in the station locations.

- (2) Review each area during hours of daylight and hours of darkness to determine if there are any possible criminal threats to our passengers and employees. As well as any threats to the equipment and facilities.
- (3) Conduct research of each area near the aforementioned buildings and bus shelters to determine if there are any possible CPTED strategies that can be used to mitigate any line of sight issues or any other problems with the facilities.
- (4) Conduct interviews of employees and passengers to determine what the perceived levels of threat are and develop mitigation strategies.
- (5) Once all research is completed, develop a complete TVA report and executive summary. The security matrix from the TSI Transit System Security course should be used so as to give the County executive staff the ability to determine if any conditions warrant immediate action (See Attachment 1).
- (6) Present the findings to the County's executive staff group complete with mitigation strategies.
- (7) Provide five (5) complete reports plus an electronic copy of the report. Placing the report on CD or a flash memory drive is acceptable.
- (8) Identify any grants that the County may be eligible for to help address any deficiencies found as a result to the study.

Security Risk Resolution Matrix

Security risk resolution is a formalized procedure for risk acceptance or risk management. Once a security risk is identified, its potential severity and probability of occurrence must be determined. The process for making the determination shall be standardized in a written procedure and followed as prescribed. The Security Committee can effectively determine the severity of all but the most difficult and/or unusual security risks using a simple deductive reasoning process. The following security risk resolution matrix is such a process that can be used to resolve risks:

Frequency of Occurrence	Hazard Categories			
	I Catastrophic	II Critical	III Marginal	IV Negligible
(A) Frequent	1A-UN	2A-UN	3A-UN	4A-AC WR
(B) Probable	1B-UN	2B-UN	3B-UD	4B-AC WR

(C) Occasional	1C-UN	2C-UD	3C-UD	4C-AC
(D) Remote	1D-UD	2D-UD	3D-AC/WR	4D-AC
(E) Improbable	1E-AC/WR	2E-AC/WR	3E-AC/WR	4E-AC
Hazard Risk Index				
1A, 1B, 1C, 2A, 2B, 3A				
1D, 2C, 2D, 3B, 3C				
1E, 2E, 3D, 3E, 4A, 4B				
4C, 4D, 4E				
Acceptance Criteria				
UN – Unacceptable				
UD – Undesirable (Decision required)				
AC/WR – Acceptable with review				
AC – Acceptable without review				

The TVA will document technical and managerial strategies for the identification, assessment, prevention, and control of security vulnerabilities during new project development (extensions, new starts, modifications and rehabilitation), the safety and security program process and/or revenue operations. The critical elements of a TVA include:

- Threat Analysis
- Threat Probability
- Threat Severity
- Threat Resolution
- Scenario Analysis
- Vulnerability Analysis

The application of these elements assures that threats and vulnerabilities are identified and translated into risks, which are then analyzed, assessed, prioritized, and tracked to resolution.

The FBI highly recommends a Terrorism Vulnerability Self-Assessment as part of this TVA process. This assessment will include development of a self-assessment program, including blank forms to allow LCPTD management to conduct regular TVA self-assessments. Blank copies of the checklist will be included.

The TVA assessment will include training sessions for the appropriate County staff. These sessions will include the finding and recommendations of the assessment. Training on the self-assessment program may be a part of the management training or conducted separately.

GOALS

The TVA and Capabilities Assessment goals are to assist the County developing effective and efficient management structures and work programs to effectively plan and implement security and emergency response related elements for the transit system.

OBJECTIVES

The TVA objectives are to:

- Reduce potential threat incidents, which are achieved by a committed application of an informed management decision-making process.
- Utilize an analytical approach to consider the likelihood that a specific threat will endanger the system, which is achieved by implementing the TVA methodology process identified.
- Identify activities that must be performed to reduce the risk of an attack and mitigate its consequences.
- Utilize a combination of quantitative and qualitative techniques to identify security requirements, including historical analysis of past events, criminal activity, intelligence assessments, physical surveys, and expert evaluation.

The objective of the Capabilities Assessment is to identify the status of the County's security and emergency preparedness activities to facilitate the planning and reaction processes for emergencies and threats to the County.

PERFORMANCE PERIOD

An initial draft study is to be completed and provided to the designated County Representative within ninety (90) calendar days after issuance of a purchase order or notice-to-proceed by the County. County comments will be provided within thirty (30) calendar days of receipt of the initial draft study. The vendor will then provide a final report in final form to the County representative within thirty (30) calendar after receipt of comments from the County.

EXHIBIT B: ADDENDUM



OFFICE OF PROCUREMENT SERVICES
315 WEST MAIN STREET, SUITE 441
PO BOX 7800
TAVARES FL 32778-7800

PHONE: (352) 343-9839
FAX: (352) 343-9473

www.lakegovernment.com

ADDENDUM NO. 1

Date: August 19, 2014

Invitation to Bid 14-0221

THREAT ASSESSMENT STUDY FOR THE COUNTY TRANSIT SYSTEM

It is the vendor's responsibility to ensure their receipt of all addenda, and to clearly acknowledge all addenda within their initial bid response. Acknowledgement may be confirmed either by inclusion of a signed copy of this addendum with the initial bid response, or by completion and return of the addendum acknowledgement section of the solicitation. Failure to acknowledge each addendum may prevent the bid from being considered for award.

This addendum does not change the date for receipt of bids or proposals.

The purpose of this addendum is to provide responses to inquiries submitted to date as follows:

Question 1: What is the anticipated budget for this analysis?

Answer 1: The County has received \$30,000 in grant funding in support of this effort.

Question 2: Is this analysis in preparation for any specific Federal funding/grant program?

Answer 2: Yes, the work is being completed pursuant to FTA requirements and related FTA grant funding.

Question 3: What are the scoring system/weighting?

Answer 3: Evaluation will be completed as stated in RFP provision 1.3, "Method of Award".

Question 4: Who is in the selection committee?

Answer 4: Not yet determined

Question 5: Is there a project budget identified?

Answer 5: See response to question 1.

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Question 6: Are you able to share what the expected budget is for this project, or at least a range for your agencies expectations?

Answer 6: See response to question 1.

Question 7: Is this project funded by one of FTA's grant programs? If so, which one?

Answer 7: See response to question 2

Acknowledgement of Addendum:

Firm Name: THE INTER-SEC GROUP Date: 2/5/15
Signature: Arthur E. Gorkin Title: PRESIDENT
Typed/Printed Name: ARTHUR E. GORKIN

EXHIBIT C: CONSULTANT'S PRICING

Line Item 1:	Provide the firm fixed price to be paid to the vendor upon full and final completion of the study as specified herein.	\$14,995.00
Line Item 2:	Provide a blended hourly rate that can be applied to additional vendor efforts within the general scope of, but beyond the specific requirements stated herein. Such effort is to be provided only at the option, and upon the prior written direction, of the County to provide such additional effort.	\$46.00/hour

EXHIBIT D: FEDERAL CLAUSE SET

{Included on Attached CD}

ATTACHMENT FIVE

LAKE COUNTY, FLORIDA

FEDERAL FUNDING CLAUSE SET FOR FTA GRANT OR STIMULUS PROGRAM

(Goods, Services and Construction)

Last Revision Date: Aug 2011

Note: any conflict between this clause set and any terms and conditions set forth in the specific solicitation and any resulting contract shall be resolved in favor of this clause set.

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Section B: Attachments: Certifications That Require Specific Entries to be completed and returned with Bid/Proposal Response

30. Attachment B.1: Buy America Certification
31. Attachment B.2: Certification Regarding Lobbying
32. Attachment B.3: Disadvantaged Business Enterprise (DBE) Program Forms 1 and 2
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- Attachment B.5: Clause/certification: Pre-Award and Post Delivery Audit Requirements

1. FLY AMERICA REQUIREMENTS

49 U.S.C. §5331 49 CFR Parts 53 and 654

1. Applicability to Contracts

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

2. Flow Down

The Fly America requirements flow down from FTA recipients and sub-recipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

3. Fly America Requirements –

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j) 49, FR Part 661

4. Applicability to Contracts

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

5. Flow Down

The Buy America requirements flow down from FTA recipients and sub-recipients to first tier

contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

6. **Buy America** - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

7. A bidder or offeror must submit to the FTA recipient (LAKE County Transit) the appropriate Buy America certification (below) with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

8. **NOTE: THE BUY AMERICA CERTIFICATION (required for contracts greater than \$100,000) is to be found as Attachment B.3 to this clause set**

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d), 49 CFR Part 604

9. Applicability to Contracts

The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

10. Flow Down

The Charter Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

11. **Charter Service Operations** - The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

3a. SCHOOL BUS REQUIREMENTS

49 U.S.C., 323(ff) 49 CFR Part 605

12. Applicability to Contracts

The School Bus requirements apply to the following type of contract: Operational Service Contracts.

13. Flow Down

The School Bus requirements flow down from FTA recipients and sub-recipients to first tier service contractors.

14. **School Bus Operations** - Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

15. 4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241 46 CFR Part 381

16. Applicability to Contracts

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

17. Flow Down

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

18. **Cargo Preference - Use of United States-Flag Vessels** - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49 CFR Part 41

19. Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or

additions to existing buildings.

20. Flow Down

The Seismic Safety requirements flow down from FTA recipients and sub-recipients to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

21. **Seismic Safety** - The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq., 49 CFR Part 18

22. Applicability to Contracts

The Energy Conservation requirements are applicable to all contracts.

23. Flow Down

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and sub-recipients and their sub-agreements at every tier.

24. **Energy Conservation** - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

25. Applicability to Contracts

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

26. Flow Down

The Clean Water requirements flow down to FTA recipients and sub-recipients at every tier.

27. **Clean Water** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and

the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. LOBBYING

31 U.S.C. 1352, 49 CFR Part 19, 49 CFR Part 20

Applicability to Contracts

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

28. Mandatory Clause/Language

- Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

29. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

30. - Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

31. - Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

32. - Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

33. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

NOTE: SEE ATTACHMENT B.2 FOR CERTIFICATION REGARDING LOBBYING

34. **9. ACCESS TO RECORDS AND REPORTS**

35. **49 U.S.C. 5325, 18 CFR 18.36 (I), 49 CFR 633.17**

36. **Applicability to Contracts**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts"

37. **Flow Down**

FTA does not require the inclusion of these requirements in subcontracts.

38. **Access to Records** - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)l, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)l, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a sub-grantee of the FTA Recipient in accordance

with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.390X11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
State Grantees			None	None	None	None
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	Yes, if non-competitive award or if funded thru 2 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
b. Contracts above \$100,000 / Capital Projects	None unless 1 non-competitive award					

II Non State Grantees	Yes 3	Those imposed on non- state Grantee	Yes	Yes	Yes	Yes
a. Contracts below SAT (\$100,000)	Yes 3	pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000 / Capital Projects						

Sources of Authority: 1 49USC5325 (a), 2 49 CFR 633.17, 3 18 CFR 36(I)

10. FEDERAL CHANGES

49 CFR Part 18

39. Applicability to Contracts

The Federal Changes requirement applies to all contracts.

40. Flow Down

The Federal Changes requirement flows down appropriately to each applicable changed requirement.

41. **Federal Changes** - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (7) dated October, 2000) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

11. BONDING REQUIREMENTS

42. Applicability to Contracts

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certifies check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his

bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than \$1 million;

(2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(3) \$2.5 million if the contract price is more than \$5 million.

43. d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

44. Flow Down

Bonding requirements flow down to the first tier contractors.

45. **Bid Bond Requirements (Construction)**

(a) Bid Security

46. A Bid Bond must be issued by a fully qualified surety company acceptable to LAKE County and listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(b) Rights Reserved

47. In submitting this Bid, it is understood and agreed by bidder that the right is reserved by LAKE County to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of LAKE County.

48. It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of LAKE County, shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of LAKE County's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefore.

49. It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by LAKE County as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense LAKE County for the damages occasioned by default, then the undersigned bidder agrees to indemnify LAKE County and pay over to LAKE County the difference between the bid security and LAKE County's total damages, so as to make LAKE County whole.

50. The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

51. The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless LAKE County determines that a lesser amount would be adequate for the protection of the LAKE County.

2. LAKE County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. LAKE County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million.

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is more than \$5 million.

2. If the original contract price is \$5 million or less, Lake County may require additional protection as required by subparagraph 1 if the contract price is increased.

52. Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect LAKE County's interest.

(a) The following situations may warrant a performance bond:

1. Lake County property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and LAKE County, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless Lake County determines that a lesser amount would be adequate for the protection of Lake County.

2. Lake County may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. Lake County may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in Lake County's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than \$1 million;

(ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or

(iii) Two and one half million if the contract price is increased.

53. Advance Payment Bonding Requirements

54. The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. Lake County shall determine the amount of the advance payment bond necessary to protect Lake County.

55. Patent Infringement Bonding Requirements (Patent Indemnity)

56. The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. Lake County shall determine the amount of the patent indemnity to protect the Lake County.

57. Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to Lake County, the Architect and/or Engineer that all materials and

equipment furnished under this Contract will be of highest quality and new unless otherwise specified by Lake County, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the Lake County Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after final payment by Lake County and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to Lake County. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to Lake County written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

12. CLEAN AIR

42 U.S.C. 7401 et seq, 40 CFR 15.6, 49 CFR Part 18

58. Applicability to Contracts

The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

59. Flow Down

The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

60. **Clean Air** - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. RECYCLED PRODUCTS

61.

62. **42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873**

63. Applicability to Contracts

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year,

or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" will become effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

64. Flow Down

These requirements flow down to all contractor and subcontractor tiers.

65. **Recovered Materials** - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

66.

14. DAVIS-BACON ACT

67.

40 USC § 167; 276a -276a-5 (1998), 29 CFR § 5 (1999)

68. Applicability to Contract

Construction contracts over \$2,000.00

Flow Down

Applies to third party contractors and subcontractors

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

69. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (i)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided that the employer's payroll records accurately set forth the time spent in each classification in

which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (i) (ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(1) The classification is utilized in the area by the construction industry; and

(2) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a) (i) (v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - Lake County Transit shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers,

employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Lake County Transit may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to LAKE County Transit for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees** - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their

representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

15. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3)(A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

Clause Language

Contract Work Hours and Safety Standards

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each

individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

16. COPELAND ANTI-KICKBACK ACT

40 U.S.C. § 276c (1999), 29 C.F.R. § 3 (1999), 29 C.F.R. § 5 (1999)

Applicability to Contracts

All construction contracts in excess of \$2,000.

Flow Down

Applicable to all third party contractors and subcontractors.

Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract. Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability to Contracts

Applicable to all contracts.

Flow Down

Not required by statute or regulation for either primary contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

AND RELATED ACTS

1 U.S.C 3801 et seq., 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307

Applicability to Contracts

These requirements are applicable to all contracts.

Flow Down

These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(2) The Contractor agrees to include the above two clauses in each subcontract financed in whole

or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

19. TERMINATION

49 U.S.C. Part 18, FTA Circular 4220.1D

Applicability to Contracts

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

a. **Termination for Convenience (General Provision)** Lake County may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lake County to be paid the Contractor. If the Contractor has any property in its possession belonging to Lake County, the Contractor will account for the same, and dispose of it in the manner Lake County directs.

b. **Termination for Default (Breach or Cause) (General Provision)** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, Lake County may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by Lake County that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, Lake County, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. **Opportunity to Cure (General Provision)** Lake County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor an appropriate period of time, not less than ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to Lake County's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor or written notice from Lake County setting forth the nature of said breach or default, Lake County shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Lake County from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

d. **Waiver of Remedies for any Breach** In the event that Lake County elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by Lake County shall not limit Lake County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. **Termination for Convenience (Professional or Transit Service Contracts)** Lake County, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. **Termination for Default (Supplies and Service)** If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lake County may terminate this contract for default. Lake County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lake County.

g. **Termination for Default (Transportation Services)** If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, Lake County may terminate this contract for default. Lake County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Lake County goods, the Contractor shall, upon direction of Lake County, protect and preserve the goods until surrendered to the Lake County or its agent. The Contractor and Lake County shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Lake County.

h. **Termination for Default (Construction)** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, Lake County may terminate this contract for default. Lake County shall

terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, Lake County may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lake County resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lake County in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if-

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Lake County, acts of another Contractor in the performance of a contract with the Lake County, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The contractor, within ten (10) days from the beginning of any delay, notifies the Lake County in writing of the causes of delay. If in the judgment of Lake County, the delay is excusable, the time for completing the work shall be extended. The judgment of Lake County shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

i. Termination for Convenience or Default (Architect and Engineering) Lake County may terminate this contract in whole or in part, for Lake County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Lake County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of Lake County, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, Lake County may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Recipient.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Recipient.

j. Termination for Convenience or Default (Cost-Type Contracts) Lake County may terminate this contract, or any portion of it, by serving a notice of termination on the Contractor. The notice shall state whether the termination is for convenience of Lake County or for the default of the

Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from Lake County, or property supplied to the Contractor by Lake County. If the termination is for default, Lake County may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Lake County and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Lake County, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, Lake County determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, Lake County, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

20. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29
Executive Order 12549

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published an update to 49 CFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, *Debarment and Suspension*, Executive Order 12689, *Debarment and Suspension*, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220(b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Clause Language

The following clause language is suggested, not mandatory. It incorporates the optional method of verifying that contractors are not excluded or disqualified by certification.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Lake County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Lake County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

21. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down

The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

22. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623; 42 U.S.C. § 2000; 42 U.S.C. § 6102; 42 U.S.C. § 12112;

42 U.S.C. § 12132; 49 U.S.C. § 5332; 29 CFR Part 1630; 41 CFR Parts 60 et seq.

Applicability to Contracts

The Civil Rights Requirements apply to all contracts.

Flow Down

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

23. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18, FTA Circular 4220.1E

Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

Model Clauses/Language

FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of (Recipient)'s [title of employee]. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by (Recipient), Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the (Recipient) is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

70. Applicability to Contracts

All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

71. Flow Down

The Breaches and Dispute Resolutions requirements flow down to all tiers.

72. Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Lake County. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Lake County Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Lake County Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

73. Performance During Dispute - Unless otherwise directed by Lake County, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

74. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

75. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Lake County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Florida, in which Lake County is located.

76. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act

by Lake County or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

77.

24. PATENT AND RIGHTS IN DATA

37 CFR Part 401, 49 CFR Parts 18 and 19

78. Applicability to Contracts

Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

79. Flow Down

The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

Contracts Involving Experimental, Developmental or Research Work.

A. Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to

authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each

subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in

80. U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

(1) **General** - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

25. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

81. Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

82. Flow Down

These provisions are applicable to all contracts and subcontracts at every tier.

83. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

84. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

85. (c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

86. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

87. (2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

26. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

Background and Applicability

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and

contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

The DBE program applies to all DOT-assisted contracting activities. A formal clause such as that below must be included in all contracts above the micro-purchase level. The requirements of clause subsection b flow down to subcontracts.

A substantial change to the payment provisions in this newest version of Part 26 concerns retainage (see section 26.29). Grantee choices concerning retainage should be reflected in the language choices in clause subsection d.

Clause Language

The following clause language is suggested, not mandatory. It incorporates the payment terms and conditions applicable to all subcontractors based in Part 26 as well as those related only to DBE subcontractors. The suggested language allows for the options available to grantees concerning retainage, specific contract goals, and evaluation of DBE subcontracting participation when specific contract goals have been established.

Disadvantaged Business Enterprises

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 14.3%. A separate contract goal **has not** been established for this procurement.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Lake County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Award of this contract is conditioned on submission of the following information **concurrent with and accompanying an initial proposal (see 49 CFR 26.53(3))**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime

contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from Lake County PTD. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify Lake County PTD, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Lake County PTD.

88. Note: Attachment B.3 contains certifications associated with the DBE Program that must be submitted in conjunction with bidder-proposer responses to the instant solicitation.

27. STATE AND LOCAL LAW DISCLAIMER

89. Applicability to Contracts

This disclaimer applies to all contracts.

90. Flow Down

The Disclaimer has unlimited flow down.

91. State and Local Law Disclaimer - The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law.

28. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1D

Applicability to Contracts

The incorporation of FTA terms applies to all contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The incorporation of FTA terms has unlimited flow down.

Model Clause/Language

FTA has developed the following incorporation of terms language:

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in [FTA Circular 4220.1E](#) are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

29. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down Requirements

Anyone who performs a safety-sensitive function for the recipient or subrecipient is required to comply with 49 CFR 653 and 654, with certain exceptions for contracts involving maintenance services. Maintenance contractors for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance subcontractors.

Model Clause/Language

Introduction

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the contractor, and the financial resources available to the recipient to oversee the contractor's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its sub-recipients and contractors comply with the rules.

Therefore, FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

Explanation of Model Contract Clauses

Under Option 1, the recipient ensures the contractor's compliance with the rules by requiring the contractor to participate in a drug and alcohol program administered by the recipient. The advantages of doing this are obvious: the recipient maintains total control over its compliance with 49 CFR 653 and 654. The disadvantage is that the recipient, which may not directly employ any safety-sensitive employees, has to implement a complex testing program. Therefore, this may be a practical option only for those recipients which have a testing program for their employees, and can add the contractor's safety-sensitive employees to that program.

Under Option 2, the recipient relies on the contractor to implement a drug and alcohol testing program that complies with 49 CFR 653 and 654, but retains the ability to monitor the contractor's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the contractor complies with the program. The disadvantage of Option 2 is that without adequate monitoring of the contractor's program, the recipient may find itself out of compliance with the rules.

Under option 3, the recipient specifies some or all of the specific features of a contractor's drug and alcohol compliance program. Thus, it requires the recipient to decide what it wants to do and how it wants to do it. The advantage of this option is that the recipient has more control over the contractor's drug and alcohol testing program, yet it is not actually administering the testing program. The disadvantage is that the recipient has to specify and understand clearly what it wants to do and why.

Drug and Alcohol Testing Option 1

The contractor agrees to:

(a) participate in (grantee's or recipient's) drug and alcohol program established in compliance with 49 CFR 653 and 654.

Drug and Alcohol Testing Option 2

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Drug and Alcohol Testing Option 3

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of (name of State), or the (insert name of grantee), to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before (insert date) and to submit the Management Information System (MIS) reports before (insert date before March 15) to (insert title and address of person responsible for receiving information). To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register. The Contractor agrees further to [Select a, b, or c] (a) submit before (insert date or upon request) a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt (insert title of the Policy Statement the recipient wishes the contractor to use) as its policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before (insert date or upon request) a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the contractor agrees to: (to be determined by the recipient, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

CLAUSE SET ATTACHMENT B.1: BUY AMERICA CERTIFICATION

(Required for contracts greater than \$100,000)

92. 1. Certification requirement for procurement of steel, iron, or manufactured products.

93. Certificate of Compliance with 49 U.S.C. 5323(j) (I)

94. The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(I) and the applicable regulations in 49 CFR Part 661.

95. Signature: _____ Title: _____

96. Company Name: _____ Date: _____

97. Certificate of Non-Compliance with 49 U.S.C. 5323(j) (I)

98. The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) (I), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j) (2) (B) or (2) (D) and the regulations in 49 CFR 661.7.

99. Signature: _____ Title: _____

100. Company Name: _____ Date: _____

101.

102.2. Certification requirement for procurement of buses, other rolling stock and associated equipment.

103. Certificate of Compliance with 49 U.S.C. 5323(j) (2) (C).

104. The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) (2) (C) and the regulations at 49 CFR Part 661.

105. Signature: _____ Title: _____

106. Company Name: _____ Date: _____

107. Certificate of Non-Compliance with 49 U.S.C. 5323(j) (2) (C)

108. The vendor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j) (2) (C), but may qualify for an exception pursuant to 49 U.S.C. 5323G) (2) (B) or (j) (2) (D) and the regulations in 49 CFR 661.7.

109. Signature: _____ Title: _____

110. Company Name: _____ Date: _____

CLAUSE SET ATTACHMENT B.2: CERTIFICATION REGARDING LOBBYING

APPENDIX A, 49 CFR PART 20-CERTIFICATION REGARDING LOBBYING

111. Certification for Contracts, Grants, Loans, and Cooperative Agreements

112. *(To be submitted with each bid or offer exceeding \$100,000)*

113. The undersigned contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)

(3) The undersigned shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

114. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

115. [Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

116. The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

117. Signature of Contractor's Authorized Official: Arthur E. Gortner Date: 2/2/15

Printed Name and Title of Contractor's Authorized Official: Arthur E. Gortner

Not Applicable

CLAUSE SET ATTACHMENT B.3: FORM 1 AND 2, DEMONSTRATION OF GOOD FAITH EFFORTS

[Forms 1 and 2 should be provided as part of the solicitation documents.]

118. FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

119. The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By: *John E. Henrique* *President*
(Signature) *Not Applicable* (Title)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.
The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: *Robert E. Kujawa* *President*
(Signature) (Title) *Not Applicable*

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

CLAUSE SET ATTACHMENT B.4. CLAUSE AND CERTIFICATION

BUS TESTING

49 U.S.C. 5323(c)
49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

Clause and language therein are merely suggested. 49 CFR Part 665 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Bus Testing Certification and language therein are merely suggested.

Bus Testing - The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: 2/5/15 Signature: Robert L. Smith
Company Name: The Tower Sea Group Title: President

CLAUSE SET ATTACHMENT B.5, CLAUSE AND CERTIFICATION
PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323
49 CFR Part 663

Applicability to Contracts

These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Applicability to Micro-Purchases

Micro-purchases are defined as those purchases under \$2,500. These requirements do not apply to micro-purchases.

Flow Down

These requirements should not flow down, except to the turnkey contractor as stated in [Master Agreement](#).

Model Clause/Language

- Clause and language therein are merely suggested. 49 C.F.R. Part 663 does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors.

- Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

-- Specific language for the Buy America certification is mandated by FTA regulation,

"Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended,"

49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

**BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT**

(To be submitted with a bid or offer exceeding the small purchase threshold for Federal assistance programs, currently set at \$100,000.)

Certificate of Compliance

The bidder hereby certifies that it will comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 C.F.R. 661.11:

Date: 2/3/15
Signature: [Signature]
Company Name: The Inter-Sec Group
Title: PRESIDENT

Certificate of Non-Compliance

The bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 U.S.C. Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 C.F.R. 661.7.

Date: 2/3/15
Signature: [Signature]
Company Name: The Inter-Sec Group
Title: PRESIDENT

NOT APPLICABLE